THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.12671 OF 2005

Between:

Mohd. Yousuf … Petitioner

And

1. Government of A.P. rep.

by its Principal Secretary, Revenue (CT)

Department, A.P. Secretariat, Hyderabad. … Respondents

And three others

Counsel for the petitioner : Sri N.Bharat Babu

Counsel for the respondents : G.P. for Services II

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.12671 OF 2005

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the A.P. Administrative Tribunal dated 3-2-2005 dismissing O.A.No.1914 of 2004, the present writ petition is filed.

Facts, to the extent necessary for this writ petition, are that while the petitioner was working as an Assistant Commercial Tax Officer, at the Madnoor Check Post in Nizamabad District, a surprise check was conducted by the Anti Corruption Bureau team on 24.3.1995 and two persons were found in possession of Rs.7,896/- and Rs.940/- respectively, representing the amounts payable to the department. Departmental proceedings were initiated against all the staff working at the check post including the petitioner, they were all placed under suspension by proceedings dated 31.7.1995, an enquiry officer was appointed on 18.9.1995 to conduct a detailed enquiry and the enquiry officer submitted a report on 3.10.1996 holding that charge No.3 levelled against the petitioner had been proved and charges 4 to 8 levelled against the other Assistant Commercial Tax Officer Sri N.Gangadhar had also been proved.

The competent authority, (Deputy Commissioner of Commercial Taxes), by

order dated 3.10.1986 imposed the punishment of stoppage of two increments with cumulative effect on the petitioner, the other Assistant Commercial Tax Officer and both the Commercial Tax Inspectors. The petitioner preferred an appeal to the Commissioner of Commercial Taxes. During the pendency of the appeal, the Commissioner issued show cause notices dated 13.12.1996 directing the petitioner and other staff members to show cause as to why punishment of dismissal from service should not be inflicted on them. These show cause notices were subject matter of challenge, in O.A.349 of 1997 and batch, before the A.P. Administrative Tribunal. The O.A. filed by the petitioner was disposed of by order dated 24.2.2003 directing him to submit his explanation and directing the Commissioner to pass appropriate orders thereon and on the appeal filed against the order dated 3.10.1996. The Tribunal further observed that any order passed adverse to the petitioner's interest should not be given effect to for a period of two weeks to enable him to seek his remedies.

The 2nd respondent, (Commissioner of Commercial Taxes), is said to have issued another show cause notice dated 24.7.2003 directing the petitioner to show cause as to why punishment of removal from service should not be inflicted on him. Contending that the 2nd respondent, the appellate authority, was prejudiced against him and the other staff members O.A.No.6057 of 2003 was filed challenging the said show cause notice. The Tribunal allowed the O.A. on 20.10.2003, setting aside the show cause notice dated 24.7.2003 and directing the respondents to pass appropriate orders in accordance with its earlier directions passed on 24.2.2003 in O.A.No.349 of 1997.

The commercial tax inspectors had earlier filed O.A.880 of 1997 and the Tribunal by order dated 26.8.2003 is said to have quashed the proceedings dated 13.12.1996 holding that the commissioner had no jurisdiction to exercise suo motu power vested under Rule 40(2) of the C.C.C.A. Rules and that he could not have exercised the power before expiry of the period of limitation for appeal as provided under the rules i.e., 3 months. The Tribunal granted liberty to the commissioner to issue fresh show cause notice in accordance with rules. The commissioner is said to have again confirmed the punishment against all the officers against whom charge sheets had been issued.

The 2nd respondent, by order dated 30.1.2004, imposed the punishment of

reduction to a lower post on the petitioner. Punishment of dismissal from service was imposed on Sri N.Gangadhar and in respect of the two commercial tax inspectors, the punishment of stoppage of two increments with cumulative effect, imposed by the deputy commissioner of commercial taxes, was confirmed by the Commissioner. Petitioner filed O.A.No.1914 of 2004 challenging the order of reversion dated 30.1.2004 and Sri N.Gangadhar filed O.A.989 of 2004 challenging the order of dismissal dated 24.1.2004. Both the O.A. were dismissed by a common order dated 3.2.2005. Aggrieved by the order of the Tribunal, Sri N.Gangadhar, the other Assistant commercial tax officer, filed W.P.No.2836 of 2005 and this court, by order dated 26.4.2005, set aside the order of the Tribunal, remitted the matter to the commissioner of commercial taxes for fresh consideration and directed the commissioner to pass appropriate orders after hearing the parties concerned and taking into consideration the order passed by him in respect of two similarly situated employees, (the two commercial tax inspectors), in respect of whom the punishment awarded by the original authority, of stoppage of two increments with cumulative effect, had been confirmed.

In the present writ petition, filed challenging the order of the A.P. Administrative Tribunal in O.A.No.1914 of 2004 dated 3.2.2005, the petitioner would contend that since a common order was passed by the Tribunal in O.A.989 of 2004 and O.A.No.1914 of 2004 and this Court, by order in W.P.No.2836 of 2005 dated 26.4.2005, had set aside the order passed in O.A.No.989 of 2004, this court would be pleased to pass a similar order in the present writ petition also.

Heard the learned counsel for the petitioner and the learned government pleader.

As is clear from the facts stated above, the competent authority had imposed different punishments, on the employees working in the check post at Madnoor, which were either confirmed or modified in appeal. While the appellate authority confirmed the punishment, of stoppage of two increments with cumulative effect, imposed on the two commercial tax inspectors, and had imposed the punishment of dismissal on N. Gangadhar, in respect of the petitioner an order of reversion was passed.

Since a common order was passed in both the O.As. filed by the petitioner and Sri N.Gangadhar, and as the common order of the Tribunal, was set aside by this Court, in one of the two O.As, the petitioner is entitled for a similar order in the

present writ petition.

As a result, the order in O.A.1914 of 2004 is set aside and the matter is remitted to the Commissioner of commercial taxes for fresh consideration and the 2nd respondent Commissioner of commercial taxes shall pass appropriate orders after hearing the parties concerned and taking into consideration the orders passed by him in respect of the two similarly situated employees in respect of whom the punishment awarded by the original authority was confirmed. This exercise shall be done within a period of two month from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. There shall be no order as to costs.

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Chelameswar, J

Dt. . .2005

_____ **Ramesh Ranganathan, J**

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